

STATEMENT

I, Roland LAPOUX, from 1984 manager of MARTINET & LAPOUX, 16 Chemin du Vivier, 78310 MAUREPAS, FRANCE, a French industrial property office up to April 1, 2008, and French IP attorney in BLOCH & GEVERS office, become BLOCH & BONNETAT, then GEVERS FRANCE (23 bis rue de Turin, 75009 PARIS, FRANCE), the French branch of the GEVERS GROUP, between April 1, 2008 and December 31, 2011, and having ceased any professional activity, hereby declare

That this statement is made to file a petition for reconsideration against the decision of September 05, 2012 on the "petition to revive-unavoidable", filed April 18, 2012, to accept an "unavoidably" delayed payment under 37 CFR 1.378(b) relating to the first maintenance fee (due by December 11, 2006) of the following expired US patent, and therefore to reinstate it:

Patent No.: 6,577,403 B1

Title: ACHROMATIC OPTICAL INTERFEROMETER WITH CONTINUOUSLY ADJUSTABLE SENSIVITY

Inventors: Jérôme PRIMOT and Nicolas GUERINEAU

Assignee: ONERA (Office National d'Etudes et de Recherches Aéronautiques),
29-avenue de la Division Leclerc, 92 CHATILLON, FRANCE

Application No.: 09/592,963

Filed: June 13, 2000

Date of patent: June 10, 2003

Priority Data: June 17, 1999 (FR), 99 07804

(Our Reference ONE0008US)

This statement supplements my statement of February 16, 2012.

In the spring 2005, the engineers and I studied the possibility to replace the old patent management software MisCab from the French firm Memotech (acquired by CPA) incompatible with the current version of the operating system Windows and having low maintenance and law updating assistance for several months. The selected software was Lola (Exhibit ML1: Lola Intellectual Property Suite) built on ORACLE by the French firm OrdiPat (3 rue Moncey, 75009 Paris FRANCE) (Exhibit ML2: software use license of October 14, 2005 between Ordipat and Martinet & Lapoux of 10/14/05 ("Contrat de licence d'utilisation de logiciel" in French; page 2, under Definitions: the software called as *Lola* ("le logiciel dénommé *Lola*" in French); Exhibit ML3: invoices of 12/08/05 ("08 décembre 2006" in French) and 01/08/06 ("08 janvier 2006" in French) from OrdiPat for twice 50% of the price of the Lola license, translation of "Contrat de licence d'utilisation de logiciel LOLA" = use license of software LOLA; "7 licences" = 7 licenses). Lola is designed for the needs of IP attorney firms and is supervised by the biggest French IP attorney firms, the shareholders of OrdiPat (www.ordipat.fr/index.asp?lang=EN; Exhibit ML4, Introducing Ordipat Company OrdiPat, page 2). MARTINET & LAPOUX also changed the server hardware and software in November 2005.

The installation and the parameterization of the software Lola, then the data retrieval from MisCab started from December 2005. Employees of MARTINET & LAPOUX took professional training on the functionalities and the utilization of Lola in the OrdiPat and MARTINET & LAPOUX premises from December 2005 and for the year 2006 (Exhibit ML5, invoices of 12/12/05 and 12/16/05 from OrdiPat) (Exhibit ML6, invoices of 04/19/06,

05/11/06, 05/23/06, 06/23/06 and 07/25/06 from OrdiPat) (Exhibit ML7, Joëlle AZEVEDO in OrdiPat):

Invoice 060401 of 12/12/05: Training PATENT on 12/02/05 (in French "Formation BREVET le Vendredi 2 décembre 2005");

Invoice 060401 of 12/12/05: Training Mailing management on 12/08/05 (in French "Formation Gestion des Courriers le Jeudi 8 décembre 2005");

Invoice 060401 of 12/12/05: Training LOLA - Thirds management on 12/09/05 (in French "Formation LOLA - Gestion des tiers le Vendredi 9 décembre 2005");

Invoice 060403 of 12/16/05: Training Trademark Management on 12/16/05 (in French "Formation Gestion des Marques Le Vendredi 16 Decembre 2005");

Invoice 060958 of 04/19/06: Training PATENT on 04/14/06 (in French "Formation BREVET le Vendredi 14 Avril 2006");

Invoice 061115 of 05/11/06: Training LOLA - TARIFFS MANAGEMENT on 05/04/06 (in French "Formation LOLA – GESTION DES TARIFS Le Jeudi 4 mai 2006");

Invoice 061127 of 05/23/06: Training LOLA - Annuities (maintenance fees) on 05/15/06 (in French "Formation LOLA – ANNUITES Le Lundi 15 mai 2006");

Invoice 061258 of 06/23/06: Training LOLA - AUTOMATIC PROCESSINGS on 06/09/06 (in French "Formation LOLA – TRAITEMENTS AUTOMATIQUES Le Vendredi 9 juin 2006");

Invoice 061394 of 07/25/06: Training LEVELING I and II (patents and annuities) on 07/05/06 and 07/12/2006 (in French "Formation MISE A NIVEAU I et II Les Mercredis 5 et 7 juillet 2006").

Alain PLANNIER resigned from the post of bookkeeper and annuity-managing clerk after having given a three months' notice and left MARTINET & LAPOUX on April 21, 2006 after 15 years (Exhibit ML8 ; work certificate of April 21, 2006). I admitted the substitute, Sandrine HAMOUR, from March 16, 2006 (Exhibit ML9: permanent contract of 02/10/06). The error in the payment of Patent No.: 6,577,403 does not dependent on the clerk change.

Sandrine HAMOUR was bookkeeper and annuity-managing clerk under my responsibility and had assistants helping her. She received information about on her post, in particular on the maintenance fee reminder/payment procedure from Alain PLANNIER, and in a complementary way from myself and the assistants. Particularly Sandrine HAMOUR received professional training on Lola patents and maintenance fees (Exhibit ML6) (Exhibit ML7, Joëlle AZEVEDO in OrdiPat):

Invoice 060958 of 04/19/06: Training only Madam Sandrine HAMOUR in PATENT on 04/14/06 (in French "Formation BREVET le Vendredi 14 Avril 2006");

Invoice 061115 of 05/11/06: Training three employees, including Madam Sandrine HAMOUR, in LOLA - TARIFFS MANAGEMENT on 05/04/06 Madam Sandrine HAMOUR (in French "Formation LOLA – GESTION DES TARIFS Le Jeudi 4 mai 2006");

Invoice 061127 of 05/23/06: Training four employees, including Madam Sandrine HAMOUR, in LOLA - Annuities (maintenance fees) on 05/15/06 (in French "Formation LOLA – ANNUITES Le Lundi 15 mai 2006");

Invoice 061258 of 06/23/06: Training four employees, including Madam Sandrine HAMOUR, in LOLA - AUTOMATIC PROCESSINGS on 06/09/06 (in French "Formation LOLA – TRAITEMENTS AUTOMATIQUES Le Vendredi 9 juin 2006");

Invoice 061394 of 07/25/06: Training three employees, including Madam Sandrine HAMOUR, in LEVELING I and II (patents and annuities) on 07/05/06 and 07/12/2006 (in French "Formation MISE A NIVEAU I et II Les Mercredis 5 et 7 juillet 2006").

At the start of May 2006, by the data migration from MisCab to Lola, I gave instructions to Sandrine HAMOUR not to delay the steps of the maintenance fee reminder and payment, as there was a risk to found inadequate positions of, or to lose, some data relating to the maintenance fees. The software replacement required a lot of effort and time and an overworking (training, parameterization, letter models, data checking tests, phone interviews and emails with OrdiPat, etc.) and led to consequent disturbance (e.g. operating anomalies/errors in database, software crash) in the works of the employees in the summer 2006. Nevertheless, we coped with this perturbed period between May and August 2006 without generating any loss of right or error in the managed patents.

The patent data migration from MisCab to Lola occurred July 4, 2006 (Exhibit ML10: OrdiPat invoice 061391 of July 25, 2006 for data migration: Writing the data recover from the software Memotech ("Ecriture de la reprise des données en provenance du logiciel Memotech" in French)) After the migration up to the start of 2007, there were free data access and non-locked processing of the steps of the procedure of maintenance fee payment for Sandrine HAMOUR and the assistants to thereby check, store and modify data and to run any payment procedure step These conditions ensure the reliability of the transferred data in Lola.

We dealt with the maintenance fees always as a function of the due date month and the "country" of each patent application or each patent. We paid the maintenance fees of the French patent applications, the French patents and the European patent applications directly to the French and European patent offices, and the maintenance fees of the foreign patent applications and the foreign patents to the foreign patent offices through the correspondent DENNEMEYER (55 rue des Bruyères, L-1274 Howald, LUXEMBOURG). Thus in MARTINET & LAPOUX, the management and the portfolios of the maintenance fees of the French patent applications, the French patents and the European patent applications were separated from the management and the portfolios of the maintenance fees of the foreign patent applications and the foreign patents ("foreign" means non French; in particular "foreign patents" also comprise national parts of European patents for states other than France, and "foreign patent applications" also comprise national patent applications filed in states other than France). At least once a month, Sandrine HAMOUR compared the monthly table of the maintenance fee reminder from DENNEMEYER to a monthly table (journal of reminders) derived by the software Lola.

The procedure in place was as follows.

For the foreign patent applications with first annual maintenance fees to be paid before the granting of the corresponding foreign patent (the majority of the applications), the assistants had a duty to store the particulars of the foreign patent application and DENNEMEYER as a correspondent in Lola and to transmit the particulars of the patent application to DENNEMEYER, when the assistant was sending the filed documents linked to the patent application to the owner. DENNEMEYER was always stored as a correspondent for the foreign patents.

For an issued foreign patent, not including a US patent, with maintenance fees, also called as renewal fees, only from or subsequent to the issue (e.g. a national patent issued from an European patent), the assistants, or sometimes the annuity-managing clerk, Sandrine HAMOUR, had a duty to transmit the particulars of the patent to DENNEMEYER when the assistant was sending the official patent to the owner. For an issued foreign patent, including a

US patent, the assistants, or sometimes myself, had a duty also to store the particulars of the foreign patent and to store DENNEMEYER as a correspondent in Lola, if it was not already done, before sending the official patent to the owner.

Because of the manner distinct to computing the due dates of the US patents maintenance fees, every month, before editing the reminders by Sandrine HAMOUR, Sandrine HAMOUR derived via Lola a list of US patents having maintenance fees, particularly a first maintenance fee, to be reminded. I compared the previous list given by Sandrine HAMOUR to my own list updated when I signed the letters with the US patent deeds to forward to the owners. Sandrine HAMOUR transmitted the particulars of the US patent to DENNEMEYER after having received payment instructions from the client/owner relating the payment of the first maintenance fee.

The objective of this double-checking system by comparing the DENNEMEYER table and my list to the monthly table from Lola was to avoid any omission of a maintenance fee in the monthly reminders.

I had reviewed the monthly steps of the maintenance fee payment fin 1989 when Mr. MARTINET ceased his professional activity. Then these steps were adapted to the old intellectual property management software MisCab used for the last ten year. We dealt with at least 500 maintenance fees per year without error particularly concerning the maintenance fees of the foreign patents.

In June and July 2006, Sandrine HAMOUR and I adapted the monthly procedure of the maintenance fee payment to the functionalities of the new software Lola (Exhibit ML7, Joëlle AZEVEDO in OrdiPat) (Exhibit ML1: Lola Intellectual Property Suite; page 8/21, Annuity; 10/21, 11/21 Annuity payment/formalities; page 16/21 "US patent granting date starts payment of maintenance fees"; Page 17/21, Under "Automatic processing": "Management of automatic job processing for set of cases. Gathers the different actions used by the automatic processing management to effect immediate or postponed work... Generate documents such as letters, invoices, as well as reports in which concerned cases are listed. Specific tabs devoted to setting by theme (annuities, trademarks, terms) and to the launching jobs"; Page 17/21, Under "Deadline": "Management of specific and unlimited queries to gather cases having pending terms in the procedure").

Further to the USPTO decision of September 05, 2012, I asked Sandrine HAMOUR to describe the "manual" and "automatic" procedures of maintenance fee payment in Lola, and the maintenance fee payment procedures adapted to Lola in MARTINET & LAPOUX since July 2006 in her statement. I approved all the steps of these procedures in July 2006.

Furthermore, I asked Joëlle AZEVEDO responsible for testing the software, training the users, elaborating technical supports and updating the laws in OrdiPat, to describe briefly the steps to execute the "manual" and "automatic" procedures of maintenance fee payment in Lola (Exhibit ML7).

To reply to the objections in the USPTO decision of September 05, 2012, I consulted in every detail the maintenance fee and account archives of MARTINET & LAPOUX from the end 2005 to provide evidences (paper documents and digital documents) on the usual operations/tasks in the maintenance fee management in Lola and on the procedure of maintenance fee payment in MARTINET & LAPOUX in conjunction with Lola.

As the first maintenance fee of above US patent 6,577,403 was due in December 11, 2006, I looked more particularly for exhibits relating to the payment of the maintenance fees of foreign patents in December 2006.

Despite checking the archives of MARTINET & LAPOUX one more time, I had been unable to find again in the archives the copy of the letters of June 28, 2006 relating to the reminders of the first maintenance fee of US patent 6,577,403 (O/Ref: ONE0008US), and the eleventh maintenance fee of Canadian patent 1,338,792 (O/Ref: ONERPOUIT) returned by the petitioner ONERA with the confirmation of the payment instruction of July 3, 2006.

I recovered my old computer that did not serve from 2009. This old computer had stored files relating to information on the maintenance fees, in particular tables, called as journals derived by Lola, which the server of the MARTINET & LAPOUX firm automatically transferred carefully to my old computer periodically to recover data in the event of a partial or total failure of the server or the database. Then I obtained information from Joëlle AZEVEDO in OrdIPat on the generation of the journals in the implementation of the procedure of maintenance fee payment in Lola confirmed by Sandrine HAMOUR. The bottom of the pages of a journal indicates exactly the date and the time (hour and minute) of the execution of the journal to Lola. Lola generated successively the numbers of the edited invoices by ascending order in accordance with the legal accountable instruction. Therefore, I am in possession of documents, such as Lola journals and invoices, having unquestionable dates.

I classified by chronological order the documents relative to the due dates of maintenance fees in December 2006 (Exhibits D0 to D33), and by way of examples, relative to the due dates in November 2006 (Exhibits N1 to N11) and January 2007 (Exhibits J1 to J6) framing December 2006 to show the steadfast repetition of the steps of maintenance fee payment in MARTINET & LAPOUX. Naturally, I am prepared to provide documents in other months up to March 2008.

To identify the error that was the cause of the delay in timely paying the first maintenance fee of US patent 6,577,403, I had asked Sandrine HAMOUR to set forth in her statement in a detailed way on the base of the documents:

- 1) The payment of the maintenance fees of the foreign patent applications and foreign patents having due dates in November 2006 and January 2007 to confirm the steps of the maintenance fee payment procedure with Lola in MARTINET & LAPOUX, and

- 2) The payment of the maintenance fees of the foreign patent applications and foreign patents having due dates in December 2006 and particularly to explain the invoicing of the first maintenance fee of US patent 6,577,403.

Furthermore, I had asked a person responsible for the maintenance fees in DENNEMEYER (Exhibit D16; statement of October 5, 2012, Tom HOFFMANN in DENNEMEYER)

to check and confirm that DENNEMEYER did not received any instructions to pay the first renewal fee of US patent 6,577,403 due no later than June 11, 2007 from MARTINET & LAPOUX, and

to certify a table of payment order of October 31, 2006 (Exhibit D6), two letters of November 23, 2006 for patents NACAM (Exhibit D25) and two letters of November 28, 2006 for 3 patents Pasquini/DIV0142 and a patent ONERA/ONE0011SG relative to first renewal

fees due in December 2006 (Exhibit D27), faxed by MARTINET & LAPOUX to DENNEMEYER.

The Sandrine HAMOUR statement shows on the base of a lot of documents (Exhibits D0-D33) that the error that was the cause of the delay in timely paying the first maintenance fee of US patent 6,577,403, results after October 23, 2006 from

- 1) the change of state from "Reminded" to "Processed" of the first maintenance fee of US patent 6,577,403 in the Lola database on October 23, 2006, and concomitantly the edition of the invoice 06/006578 of October 23, 2006 (Exhibit D14) of the first maintenance fee in accordance with the ONERA instructions of July 03, 2006,
- 2) the Sandrine HAMOUR work overload on October 23, 2006 and
- 3) the nonappearance of the letter of payment instruction of July 3, 2006 from ONERA relating to the first maintenance fee in the portfolio of the due dates in December 2006, from the end of October 2006,

though Sandrine HAMOUR systematically carried out the steps of the maintenance fee payment procedure in place in MARTINET & LAPOUX.

1) Because of the state "Processed" of the first maintenance fee after October 23, 2006, the second maintenance fee of US patent 6,577,403 was at the state "In progress". Therefore, it was impossible for Sandrine HAMOUR to consider in Lola that the first maintenance fee had still to be paid by Monday December 11, 2006 or with a surcharge during the period from Tuesday, December 12, 2006 through Monday, June 11, 2007. Indeed a maintenance fee with the state "Processed" could not be included in a table of to-be-reminded or to-be-paid maintenance fees with due dates in December 2006 because in Lola, the state "Processed" means that the maintenance fee had been paid and invoiced.

2) In a way different from the usual procedure in place, because of the Sandrine HAMOUR work overload, Sandrine HAMOUR did not prepare and print a letter of payment order relative to the first maintenance fee of US patent 6,577,403 (state changed to "Processed" after October 23, 2006) to DENNEMEYER at the end of October 2006, this first maintenance fee at the end of October 2006 having turned to the state "Processed" and being not included in the DENNEMEYER reminder table for due dates in December 2006. This opposes the procedure in place to transmit such a letter of payment order of a maintenance fee in continuity with the Lola processing of the maintenance fee and particularly the change of the maintenance fee state from "Reminded" to "Processed" in Lola.

In the example relating to the three SOFITEC patents DIV0190DE/ES/SE (see Sandrine HAMOUR statement, first example, paragraphs n4) and n6)), the two letters of payment orders for the due maintenance fees of the three SOFITEC patents DIV0190DE/ES/SE not included in the maintenance fee reminder table of July 27, 2006 from DENNEMEYER (Exhibit N9) were transmitted to DENNEMEYER on October 2, 2006 (Exhibit N10) at the latest during the few days succeeding the change of state, i.e. to the end current month about. The change of state occurred on September 18, 2006 because the stored orders of payment were enabled and accordingly, the Lola journal of payment orders of September 18, 2006 (Exhibit N6; page 3/3, under SOFITEC, lines 1, 2, 3, 6, 7 and 8) and the invoices 06/006529 to 06/006534 of September 18, 2006 associated to six patents DIV0124EP/DE/ES/GB and DIV0190DE/ES/SE of SOFITEC (Exhibit N5) were edited.

3) The nonappearance of the letter of payment instruction of July 3, 2006 from ONERA in the portfolio of the due dates in December 2006 was identified by Sandrine HAMOUR as a lack to give an order of payment to DENNEMEYER. Thus, Sandrine HAMOUR was not enticed to derive a letter of payment order to DENNEMEYER to pay this first maintenance fee after October 23, 2006 and at least by Monday, December 11, 2006.

For example, comparatively to the fifth maintenance fee of Singaporean patent 98758 2003/04539-0 (O/Ref ONE0011PCT/SG) also having a due date in December 2006 and of which the first maintenance fee did not appear also in the DENNEMEYER reminder table for due dates in December 2006 (Exhibit D6 or D15), Sandrine HAMOUR sent the order to pay the fifth maintenance fee to DENNEMEYER by a letter of November 28, 2006 (Exhibit D27), because Sandrine HAMOUR had the instructions of payment of July 3, 2006 from ONERA (Exhibit D2) in the portfolio of due dates in December 2006.

On April 1, 2008, MARTINET & LAPOUX transferred its activities to BLOCH & GEVERS (become BLOCH & BONNETAT, then GEVERS FRANCE (23 bis rue de Turin, 75009 PARIS, FRANCE) according to a corporate contract dated March 19, 2008, S.A. BUREAU GEVERS having entrusted BLOCH & GEVERS (the French branch of S.A. BUREAU GEVERS) with the management of MARTINET & LAPOUX clients. MARTINET & LAPOUX ceased to have any employee from April 1, 2008.

From July 1, 2008, Sandrine HAMOUR ceased to manage the patent maintenance fees for the MARTINET & LAPOUX clients and the division GEVERS RENEWALS in GEVERS (Holidaystraat 5, B-1831 Diegem – Bruxelles, BELGIUM) and BLOCH & GEVERS managed all the patent maintenance fees for the MARTINET & LAPOUX clients.

Between April and October 2008, I confirm to have seen monthly tables of French patents and foreign patents in force that Sandrine HAMOUR derived from Lola on the server of MARTINET & LAPOUX, and have seen emails including these tables sent by Sandrine HAMOUR to François GEVERS and/or Anne HOTTAT in the division GEVERS RENEWALS in Belgium.

In my digital archives of 2009, I had found my email of Thursday, February 26, 2009 12:20 (Exhibit ML11, including a copy from the EXCEL table original). In this email, I indicated to François GEVERS "Table 1 completed in the green boxes ("Tableau 1 complété au niveau des case verts" in French) in an attached EXCEL table ("FG-Lapoux 1ere partie Brevet - New amended 25-2-2009- annu lapoux new 2009021718.XLS"). On the line 56 of the attached EXCEL table relating to US patent 09/592,663 6,577,403 filed June 13, 2000 and issued on June 10, 2003, I included in the green box of the line 56: "ONE0008 ann2 12/2010", i.e. ONE0008, second maintenance fee in December 2010.

Therefore, from February 26, 2009, and thus before as my email replied to the to-be-completed table sent by François GEVERS and as Sandrine HAMOUR had forwarded a table of patents having dates of filing in June, GEVERS RENEWALS knew the due date of the second maintenance fee of US patent 09/592,663 6,577,403.

On January 1, 2012, I ceased activity in the industrial property field.

On January 16, 2012, GEVERS FRANCE forwarded to MARTINET & LAPOUX, i.e. myself, (Exhibit ML12) an email of January 13, 2012 from Hervé LACHAUD, ONERA, having established by online consultation of USPTO patent bibliographic data that above-mentioned US patent 6,577,403 expired for failure to pay maintenance fee. GEVERS FRANCE informed me by phone interviews that USPTO refused the payment of the maintenance fee of US patent 6,577,403 due by December 10, 2010. Then in April 2012, ONERA authorized us to proceed with the preparation and filing of the Petition to Revive.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine and imprisonment, or both, under 18 U.S.C. § 1001 of the United States Code.

November 2, 2012.

A handwritten signature in black ink, appearing to be 'RLAPOUX', written in a cursive style.

Roland LAPOUX

Encl.:
Exhibits ML1 to ML12
Exhibits N1 to N11
Exhibits J1 to J6
Exhibits D0 to D33